

of the bill. The local government executive may request the facility hold a public meeting in any county where real property or an interest in real property included in the construction certificate application is located. The facility would be required to notify the local government executive of any material changes to the project plan occurring after the public meeting.

Current law at KRS 278.708 requires that any person wanting to build a merchant electric generating facility shall file a site assessment report with the Kentucky State Board on Electric Generation and Transmission Siting (“Siting Board”), and identifies the information that shall be included in the report. SB 69 SCS **Section 6** would amend KRS 278.708 to require that a facility decommissioning plan be submitted as part of the site assessment report. **Section 6** identifies specific elements to be included in a decommissioning plan submitted for a proposed solar merchant electric generating facility and includes elements required if requested by the landowner. The SCS requires that after the application for the construction certificate has been approved, the secretary of the Energy and Environment Cabinet (EEC) shall ensure ongoing compliance with the mitigation measures that were conditions of the application process.

Section 7 of the bill would amend KRS 278.710 to require that, before construction of a merchant electric generating facility begins, the Siting Board require a bond or similar security be furnished to guarantee decommissioning of the plant according to the established timeframes. The Siting Board would set the amount of the bond/security equal to the estimated cost of full decommissioning in accordance with the plan approved by the Board, less the salvage value of the decommissioned facility. The decommissioning costs and salvage values are to be determined by an independent, experienced and expert third party.

If the facility is located on leased property the bond/security shall name the landowner as primary beneficiary. If the facility is located on property owned by the person responsible for its decommissioning, the security shall name the local governing bodies as primary beneficiaries only with the consent of governing bodies. The security shall be forfeited if work to decommission the facility is not begun within 12 months of the date the facility ceases to produce electricity for sale, or fails to complete the decommissioning plan within 18 months of that date. If a bond or security has been forfeited for failure to decommission the plant as required, and no other person is willing or able to effectuate the plan, the EEC **may** claim the bond funds and do so. Proceeds from forfeited security shall only be used to complete decommissioning of the facilities on the property for which the security was posted. Neither the local government, the Siting Board, nor the EEC shall be liable for decommissioning any merchant electric generating facility.

Once the Siting Board has approved an application for a construction certificate and the applicant has posted the bond/security, the Siting Board’s authority to enforce conditions of the construction certificate, including bonding and decommissioning requirements, shall end. The EEC shall then monitor and enforce compliance with statutory requirements and the decommissioning plan. The EEC shall also review the posted bond every 5 years and require it be adjusted as necessary.

Section 7 also prohibits the transfer of rights and obligations under a construction certificate without first having applied to and received a determination from the EEC that the acquirer or transferee has a good environmental compliance history and has the financial capacity to assume responsibility to comply with the terms of the construction certificate, to perform the decommissioning plan, and posting of bond. The EEC shall approve or deny the transfer of interests within 90 days of the application and shall issue findings at that time explaining the reasons for denying or approving any transfer application.

Section 8 creates a new section of Subchapter 10 of KRS Chapter 224 to require the EEC to promulgate administrative regulations pursuant to KRS Chapter 13A to establish the monitoring and enforcement requirements necessary to ensure that each merchant electric generating facility complies with the requirements and conditions of its construction certificate application approval. The administrative regulations shall include reasonably necessary fees to cover the cabinet's monitoring and enforcement costs to be collected from merchant electric generating facilities. As part of the enforcement authority, the EEC may suspend the operation of a merchant electric generating facility to ensure compliance.

Section 9 amends KRS 224.10-100 to give the EEC the authority, power and duty to monitor and enforce the requirements of KRS 278.700 to 278.718 and the conditions of merchant electric generating facility construction certificate approvals, including decommissioning and bonding requirements.

Section 10 applies all the requirements of this legislation to a merchant electric generating entity filing an application for a construction certificate pursuant to KRS 278.704 within 180 days of the effective date of this Act. Additionally, these entities shall comply with the requirements of KRS 278.704(6) in effect prior to the effective date of this Act.

Section 11 declares that an emergency exists and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

The fiscal impact of SB 69 as amended by SCS 1 on local governments is indeterminable but would be minimal. The posting of sufficient security makes it less likely the local government will be burdened with an eyesore and potential hazardous site once the facility is no longer operational. It also acts as an incentive for the facility owner to complete decommissioning in accordance with the approved plan, else risk forfeiture of the security, and negative impact on their ability to secure bonding for future projects. There is potential for some cost to the local government if it has to seek court assistance to enforce its right to forfeit the bond/security. This cost is indeterminable and a well-drafted decommissioning plan, approved by the Siting Board, and bond/security language should minimize such costs. The bill also states in no uncertain terms that the local government is not responsible for those costs.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II applies to SB 69 as introduced and amended by SCS 1. The fiscal impact resulting from the SCS remains unchanged from the original local mandate.

SCS 1 changed the period of time the construction certificate issued under Section 4 remains valid from two years to three years. It deleted the right of entry element to the proposed facility in the event the plant owner fails to timely initiate or complete decommissioning of the plant. In Section 6, it added the requirement of a facility decommissioning plan be submitted. It requires the EEC to ensure ongoing compliance of the approved application. Section 7 was amended to remove local government bodies as secondary beneficiaries of a bond. If the facility is located on property owned by the person responsible for its decommissioning, the security shall name the local governing bodies as primary beneficiaries only with the consent of governing bodies. It also added the requirement that the EEC shall approve or deny the transfer of interests within 90 days of the application and shall issue findings at that time explaining the reasons for denying or approving any transfer application.

SCS 1 also added Sections 8 and 9 described above.

Data Source(s): Public Service Commission; LRC staff

Preparer: MO **Reviewer:** MKDL **Date:** 2/22/22